

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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Angelia J. Larson,

Plaintiff,

vs.

REPORT AND RECOMMENDATION

Wells Fargo Bank N.A., and
Federal Home Loan Mortgage
Corporation,

Defendants.

Civ. No. 09-3720 (MJD/RLE)

* * * * *

This matter came before the undersigned United States Magistrate Judge upon a routine supervision of cases filed in this Division, and upon an assignment made in accordance with Title 28 U.S.C. §636(b)(1)(B).

It appears from the Record that this action was commenced on or around December 5, 2009, in the Minnesota District Court for Big Stone County. See, Notice of Removal, Docket No. 1, ¶1. On December 29, 2009, the Defendant Wells Fargo Bank N.A. (“Wells Fargo”) filed a Notice of Removal. Id. On February 16, 2010, it having appeared that the deadlines had since passed, and that the Defendants had not filed an Answer, or otherwise responded to the Complaint, as required by the Federal

Rules of Civil Procedure and the Local Rules of this Court, we issued an Order, in which we directed the Plaintiff to:

1. Notify the Defendants Wells Fargo Bank N.A., and the Federal Home Loan Mortgage Corporation, that they are required to serve and file an Answer or some other responsive pleading, or to move for an extension of time to do so, and that an application for entry of default is required within ten (10) days of such notification if no response is filed;
2. File an application for entry of default unless the required pleadings are filed within ten (10) days of the referenced notification; or
3. Advise the Court in writing of any good cause to the contrary.

Docket No. 2. at p. 3.

In that Order, we also advised that “unless counsel for the Plaintiff complies with this Order within twenty (20) days of the date of this Order, this case may be dismissed for lack of prosecution.” Id. at p. 4.

Accordingly, on March 9, 2010, Wells Fargo filed an Answer to the Complaint. See, Answer, Docket No. 3. However, to this date, the Federal Home Loan Mortgage Corporation has not filed an Answer, and the Plaintiff has failed to apply for an entry of a default against the Federal Home Loan Mortgage Corporation, or advise the Court of any good cause to the contrary. Accordingly, the Plaintiff has failed to abide by

the terms of our Order of February 16, 2010. Since we have previously forewarned the Plaintiff of the potential consequences for her failure to abide by the Orders of this Court, we recommend that this action be dismissed, without prejudice, as to the Defendant Federal Home Loan Mortgage Corporation, for the Plaintiff's failure to comply with this Court's Order of February 16, 2010, and for lack of prosecution

NOW THEREFORE, It is --

RECOMMENDED:

That this action be dismissed, without prejudice, as to the to the Defendant Federal Home Loan Mortgage Corporation, for failure to comply with this Court's Order of February 16, 2010, and for lack of prosecution.

BY THE COURT:

Dated: April 1, 2010

s/ Raymond L. Erickson

Raymond L. Erickson
CHIEF U.S. MAGISTRATE JUDGE

NOTICE

Pursuant to Rule 6(a), Federal Rules of Civil Procedure, D. Minn. LR1.1(f), and D. Minn. LR72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties **by no later than April 15, 2010**, a writing which specifically identifies those portions of the Report to which objections are made and the bases of those objections. Failure to comply with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals.

If the consideration of the objections requires a review of a transcript of a Hearing, then the party making the objections shall timely order and file a complete transcript of that Hearing **by no later than April 15, 2010**, unless all interested parties stipulate that the District Court is not required by Title 28 U.S.C. §636 to review the transcript in order to resolve all of the objections made.